

**Attorneys for Plaintiffs**

CLERK  
CANTERBURY S. BURKE  
IDAHO

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF IDAHO**

KIMBERLEY SMITH, MICHAEL B. HINCKLEY, JACQUELINE T. ILADUN, MARILYN J. CRAIG, JEFFERY P. CLEVENGER, and TIMOTHY C. KAUFMANN, individually and on behalf of those similarly situated.

Plaintiffs.

**vs.**

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendant,

)  
)  
) Case No. CIV 01-0244-S-BLW  
)  
) **AFFIDAVIT OF WILLIAM H. THOMAS**  
) **IN SUPPORT OF PLAINTIFFS'**  
) **MOTION FOR LEAVE TO FILE**  
) **OVERLENGTH STATEMENT OF**  
) **MATERIAL FACTS**

AFFIDAVIT OF WILLIAM H. THOMAS IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE OVERLENGTH STATEMENT OF MATERIAL FACTS, P. 1

259

STATE OF IDAHO )  
 )ss.  
County of Ada )

I, WILLIAM H. THOMAS, being first duly sworn on oath, depose and say:

1. I am one of the attorneys for the above-named plaintiffs;

2. The omission to file a motion to extend the length of the briefing with regard to Defendant Micron Electronics, Inc.'s Motion for Partial Summary Judgment Re Statutes of Limitation was inadvertent.

3. The length of Plaintiffs' Statement of Material Facts was necessitated by having to glean facts from twenty (20) depositions that had already been taken, many of which are already a part of the Court's record having been attached to documents filed in this action by Defendant as follows:

With Docket #122 - 8/21/02 - Second Affidavit of Gregory C. Tollefson  
in Support of Response to Plaintiffs' Motion for Conditional  
Certification (filed under seal):

Mathew Jarame Ell of 2/8/02  
Alan C. Garcia of 7/12/02  
Timothy C. Kaufmann of 7/18/02  
Carren Renee Mattson Seibert of 7/10/02  
Kimberly Smith of 2/15 and 2/18/02  
Tawni Weaver of 2/18/02  
Tracy Scott Wells of 8/9/02

With Docket #202 - Hancock Affidavit in Support of Defendant's Motion  
for Summary Judgment Re Plaintiffs' Claims of Altering  
Employees' Timecards (filed under seal):

Marilyn Craig (Vol II) of 5/5/04  
Kevin Mark Henderson of 4/24/04  
Jacqueline Hladun of 5/5/04  
Dale Hope of 4/14/04

AFFIDAVIT OF WILLIAM H. THOMAS IN SUPPORT OF PLAINTIFFS' MOTION  
FOR LEAVE TO FILE OVERLENGTH STATEMENT OF MATERIAL FACTS, P. 2

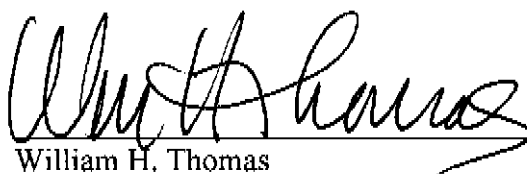
Timothy Kaufmann (Vol II) of 4/16/04  
Michelle Saari of 5/4/04  
Allen Thom of 5/3/04

4. The excerpts from those six depositions not previously filed with the Court:

Isaac B. Moffett  
Jeffrey R. Parrish  
Laurie McGeorge  
Jeffery Clevenger  
Ryan Keen  
James Wells

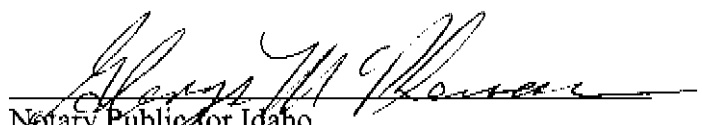
are attached hereto, along with the deposition cover sheets and Court Reporter's Certificates.

5. Plaintiffs should be granted leave to file their 26-page Statement of Material Facts.

  
William H. Thomas

Subscribed and sworn to before me this 11<sup>th</sup> day of August, 2004.



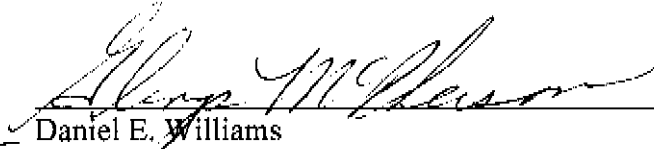
  
Notary Public for Idaho  
Residing at Boise, Idaho  
My Commission Expires: 11/7/04

CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of August, 2004, I served true and correct copies of the foregoing instrument on the following attorneys as indicated:

Kim J. Dockstader  
Gregory C. Tollefson  
Teresa A. Hill  
Stoel Rives LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702

       Via Hand Delivery  
       Via Facsimile (208) 389-9000  
  ✓   Via U.S. Mail

*for*   
\_\_\_\_\_  
Daniel E. Williams



**Copy**

In the United States District Court  
for the District of Idaho

KIMBERLEY SMITH and MICHAEL B. HINCKLEY, )  
individually and on behalf of those similarly )  
situated, )

Plaintiffs, )

vs. )

MICRON ELECTRONICS, INC., a Minnesota )  
corporation, )

Defendant. )



**DEPOSITION OF ISAAC B. MOFFETT**

January 14, 2002

Reported by  
Patricia J. Terry, RPR  
CSR No. 653

THE REALTIME COURT REPORTERS  
**TUCKER**  
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>

E-Mail: [tucker@tuckercourtreporters.com](mailto:tucker@tuckercourtreporters.com)

## **DEPOSITION OF ISAAC B. MOFFETT.**

taken at the instance of the defendant, at the law offices of Stoel Rives, LLP,  
101 S. Capitol Boulevard, Suite 1900, in the City of Boise, State of Idaho,  
commencing at 9:02 a.m., on January 14, 2002, before Patricia J. Terry,  
Certified Shorthand Reporter, Registered Professional Reporter by testing, a  
Notary Public in and for the State of Idaho, pursuant to notice, and in  
accordance with the Federal Rules of Civil Procedure.

## **APPEARANCES**

### **For Plaintiffs**

HUNTLEY PARK THOMAS BURKETT  
OLSEN & WILLIAMS, LLP  
by CHRISTOPHER F. HUNTLEY  
250 S. 5th Street, Suite 660  
Post Office Box 2188  
Boise, Idaho 83701  
Phone: (208) 345-7800  
Fax: (208) 345-7894  
E-mail: chuntley@idahoatty.com

### **For Defendant**

STOEL RIVES, LLP  
by KIM J. DOCKSTADER (not appearing)  
and GREGORY C. TOLLEFSON  
101 S. Capitol Boulevard, Suite 1900  
Boise, Idaho 83702  
Phone: (208) 389-9000  
Fax: (208) 389-9040  
E-mail: kjdockstader@stoel.com  
E-mail: gctollefson@stoel.com

Page 69

(1) I can give you overall.  
(2) Q: Overall for 2000 or overall —  
(3) A: For the entire time.  
(4) Q: Okay. What is that number?  
(5) A: My best guesstimation in hours, about  
(6) 500 hours.  
(7) Q: Five hundred total overtime hours that  
(8) you did not record?  
(9) A: Yes.  
(10) Q: Were there times in 1999 when you did  
(11) not accurately record your time?  
(12) A: Yes.  
(13) Q: For the months of September through  
(14) December?  
(15) A: Yeah. I'm not sure about the September,  
(16) but, yeah.  
(17) Q: The 500 hours that you're estimating you  
(18) did not record, those were all overtime hours?  
(19) A: Yeah. Again, those are at this point a  
(20) guesstimate on overtime hours.  
(21) Q: Right. I understand. Did that 500  
(22) hours, do you know did that occur mostly in the  
(23) year 2000?  
(24) A: Probably.  
(25) Q: I'm just wondering because you were only

Page 70

(1) employed for two or three months in 2001. I'm just  
(2) wondering if most of that time included the year  
(3) 2000.  
(4) A: Well, between the two.  
(5) Q: Now, you said you're not sure whether  
(6) you failed to record any overtime in 1999; is that  
(7) right?  
(8) A: Say the question again.  
(9) Q: You told me you're not sure whether you  
(10) failed to record any overtime in September of 1999?  
(11) A: Right.  
(12) Q: But are you sure that you didn't record  
(13) some of the overtime that you worked in October of  
(14) 1999?  
(15) A: That I didn't or did?  
(16) Q: That you did not.  
(17) A: No, I'm sure I didn't. I'm sure there  
(18) was overtime worked and that still was not claimed.  
(19) Q: In October of 1999?  
(20) A: Yes.  
(21) Q: And who was your supervisor at that  
(22) time?  
(23) A: In October it's either Jay Church or  
(24) Greg Goodman.  
(25) Q: Was Jay Church your first supervisor you

Page 71

(1) had when you started?  
(2) A: Yes.  
(3) Q: Do you recall how long Mr. Church was  
(4) your supervisor?  
(5) A: I don't believe it was very long at all.  
(6) Could be mistaken, but ...  
(7) Q: Could Greg Goodman have become your  
(8) supervisor even as early as some point in September  
(9) of '99?  
(10) A: No.  
(11) Q: No. So October?  
(12) A: Well, let me take that back. It could  
(13) have been as early as the end of September. I had  
(14) so many freaking supervisors. It very easily could  
(15) have been the end of September when Greg became —  
(16) it seems like I think — seems like they separated  
(17) the team in half, and Greg got half because I  
(18) recall him training us on the VAX. So that would  
(19) make sense.  
(20) Q: We didn't establish exactly when this  
(21) occurred, but the first time in 1999 that you did  
(22) not record all of the overtime hours that you  
(23) worked, why did you not record those hours?  
(24) A: Because warning came down that no  
(25) overtime. If we claimed overtime, then one or

Page 72

(1) several things could happen.  
(2) Q: Can you tell me what those things are?  
(3) A: Termination. They could fire you on the  
(4) spot for it. Secondly, they would say when the  
(5) calls start slacking — and it gets to the point  
(6) where there's hardly any calls coming in the spring  
(7) and summer — they'll lay off people. And they  
(8) will take a look at your performance versus your  
(9) hours. The one who can perform the most with the  
(10) least amount of hours will keep a job, and the  
(11) other ones won't.  
(12) Q: Do you recall if that was written or was  
(13) that told to you by your supervisor?  
(14) A: Told to me by a supervisor.  
(15) Q: Was that Mr. Goodman or Mr. Church or do  
(16) you recall?  
(17) A: Jim Gibson told me that. Greg Goodman  
(18) also told me that. Those were the two that I  
(19) remember for sure that said that.  
(20) Q: Did they also tell you that overtime was  
(21) not authorized?  
(22) A: I can't say they said that.  
(23) Q: So after Mr. Gibson and/or Mr. Goodman  
(24) told you these things about overtime, you continued  
(25) to work some overtime hours?

Page 73

[1] A: Yes.

[2] Q: And you didn't record those hours?

[3] A: That's correct.

[4] Q: And why did you continue to work  
[5] overtime hours if you were told that they didn't  
[6] want you to have any overtime?

[7] A: For several reasons. One is they —  
[8] they said it here — expect you to do something  
[9] different on this hand. They'd set the goals so  
[10] high you had no choice but to work the hours. The  
[11] sales were coming in. They couldn't man the  
[12] phones. There wasn't enough people to answer the  
[13] phones. And as long as you were producing, they  
[14] act like you weren't even there. As long as you  
[15] were producing.

[16] And for us, the more computers we sell,  
[17] the more services we sell, the bigger the  
[18] commission. So just for myself, I just, well, I  
[19] don't get the overtime, but I'm going to make a  
[20] heck of a good commission check.

[21] Q: So is that one of the reasons why you  
[22] worked overtime during this period is because of  
[23] the potential for commissions earnings; is that  
[24] correct?

A: I needed to lever myself, not only with

Page 74

[1] performance, but with the hours, and, again, needed  
[2] a job. If I didn't perform — if you didn't  
[3] perform to their outrageous standards, you didn't  
[4] have a job. That's the bottom line. You've got to  
[5] keep working. Do whatever it takes.

[6] Q: Did Mr. Gibson or Mr. Goodman ever tell  
[7] you not to record overtime that you'd worked?

[8] A: What they said was — let me think about  
[9] this for a minute. Okay. I need to split this up.

[10] Q: Sure.

[11] A: Jim said — he said no overtime. And  
[12] when I asked why no overtime when the company's  
[13] making a killing with the extra 15 systems we sell  
[14] by the end of the day, what difference does it  
[15] make? And he goes, they don't want to — they have  
[16] to pay commission — they have to pay overtime on  
[17] the commission as well as the hours. So he said,  
[18] actually, in a way they pay double on the overtime.  
[19] They don't want to do that; therefore they don't  
[20] want you working overtime. That's what he said.

[21] I brought it up to Greg. Greg says,  
[22] "I'm not going to tell you to do anything. I want  
[23] performance. You do what it takes." That's what  
[24] he said.

[25] Q: Greg's Mr. Goodman?

Page 75

[1] A: Yes.

[2] Q: So is it accurate to say neither of them  
[3] ever told you not to write down all the overtime  
[4] that you worked, in those words?

[5] A: There was times when Greg would come  
[6] back from meetings and say, "Guys, no overtime.  
[7] You can't be writing overtime. You can't work  
[8] overtime." Of course, we'd be in an uproar, and  
[9] I'd sit there like the rest of us and keep working  
[10] past my time.

[11] He'd come by, "Aren't you supposed to be  
[12] home by now?"

[13] I'd say, "Well, phone calls are ringing.  
[14] You can't have" — we'd just turn around and show  
[15] him the benefit. He goes, "Don't get me in  
[16] trouble."

[17] Q: And this was Mr. Goodman, still, we're  
[18] talking about?

[19] A: Yes.

[20] Q: Did you ever tell him that you were  
[21] working overtime that you weren't recording?

[22] A: Not necessarily in those words.

[23] Q: In some other words?

[24] A: Yeah. Essentially what I would say —  
[25] one particular time I told him, "Let me know if

Page 76

[1] it's getting a little hot for you, but I don't mind  
[2] putting in the time not claiming it if I get the  
[3] sales."

[4] Q: This was to Mr. Goodman?

[5] A: Yes.

[6] Q: What was his response?

[7] A: His response was typical Greg. It would  
[8] be a chuckle, a smile, and say, "Don't get me in  
[9] trouble."

[10] Q: What about Mr. Church? Did you ever  
[11] have any sort of conversation like that with  
[12] Mr. Church?

[13] A: No. Never worked long enough with him.

[14] Q: Do you know whether you ever worked any  
[15] overtime when Mr. Church was your supervisor that  
[16] you didn't record?

[17] A: I don't recall.

[18] Q: I'm handing you what has been previously  
[19] marked as Defendant's \*017.

[20] Have you seen that document before?

[21] A: I don't remember.

[22] Q: Do you have an understanding of what  
[23] this document is?

[24] A: I believe I do.

[25] Q: What's that understanding?

Page 85

(1) Do you recall that?

(2) A: Yeah, we talked about that.

(3) Q: Yes. Am I correct in saying that — did  
(4) you tell me that Mr. Goodman never in those  
(5) specific words told you that you needed to work  
(6) overtime without writing it down or recording it?

(7) A: Repeat the question, please.

(8) Q: Sure. I just want to make sure I got  
(9) this correct that you told me — did you tell me  
(10) that Mr. Goodman never specifically told you that  
(11) you had to work overtime and you couldn't write it  
(12) down?

(13) A: That I couldn't work overtime, and I  
(14) couldn't write it down?

(15) Q: I'm sorry. That you had to work  
(16) overtime and you could not write it down.

(17) A: Could not write it down. He did not say  
(18) those words.

(19) Q: But you told me that, because of the job  
(20) requirements, that you wanted to keep your job, and  
(21) because of the commission, that you chose to work  
(22) overtime; is that correct?

(23) A: Because we wanted to keep our job, we  
(24) had to meet the goals, we had to show performance  
(25) with the least amount of time for the future

Page 86

(1) selection, and we — "we" as in the few of us that  
(2) talked about it — essentially justified us turning  
(3) our backs on the overtime because the potential for  
(4) commission.

(5) Q: That was your choice to do that?

(6) A: No. Keeping a job isn't my choice.

(7) Q: You chose to work — you chose to work  
(8) the overtime?

(9) A: I chose to keep my job.

(10) Q: But did anyone ever tell you, "Isaac,  
(11) you have to work overtime tonight, and you can't  
(12) write it down"?

(13) A: Not in those words.

(14) Q: And I understand what you're saying  
(15) about wanting to keep your job, but I'm trying to  
(16) find out if anyone ever told you you had to work  
(17) overtime. You're saying you needed to do it to  
(18) keep your job, but did anyone ever tell you you had  
(19) to work overtime and you couldn't write it down?

(20) A: Like I said, in those words, no.

(21) Q: Are you the one that decided to work the  
(22) overtime, or did someone else tell you to work the  
(23) overtime that you didn't write down?

(24) A: Ask that again, please.

(25) Q: Sure. Are you the one that decided to

Page 87

(1) work the overtime that you didn't record, or did  
(2) someone else tell you to work that overtime?

(3) A: I don't think that's very accurate. I  
(4) think what's accurate is, we were expected to work  
(5) the overtime.

(6) Q: When you say "expected," you're  
(7) referring to needing to meet the requirements of  
(8) your job?

(9) A: That's correct.

(10) Q: You didn't have a shift that was like a  
(11) nine- or ten-hour shift. When you're saying  
(12) "expected to work the overtime," you're referring  
(13) to what needed time that you felt to get your job  
(14) done; is that correct?

(15) A: Most of the time the only way to meet  
(16) the goals was to work the overtime for those extra  
(17) phone calls.

(18) Q: After Mr. Goodman, do you remember  
(19) approximately when Mark Auchempach, if he was your  
(20) next supervisor, when he became your supervisor?

(21) A: I believe it was February. Had to have  
(22) been February 2000.

(23) Q: Did Mr. Auchempach tell you you needed  
(24) to work overtime that you couldn't record?

(25) A: No.

Page 88

(1) Q: Did you ever tell Mr. Auchempach — did  
(2) you, when Mr. Auchempach was your supervisor, did  
(3) you work overtime that you did not record?

(4) A: I'm sure there was some.

(5) Q: When you worked for Mr. Auchempach, were  
(6) you still a small business rep?

(7) A: Yes, I was a small business account  
(8) manager.

(9) Q: You said you're sure there was some  
(10) overtime you worked when Mr. Auchempach was your  
(11) supervisor that you did not record. Why are you  
(12) sure of that?

(13) A: Because I never wanted to go over 60  
(14) hours even when I could work overtime. So I would  
(15) make sure it stayed there.

(16) Q: Over 60 hours per week?

(17) A: That was some cases.

(18) Q: So you never wanted to have more than 20  
(19) hours of overtime in a given week; is that  
(20) accurate?

(21) A: Um-hmm.

(22) Q: Why is that?

(23) A: Didn't want to make it look like I was  
(24) trying to milk everything Mark was allowing me to  
(25) do.

## REPORTER'S CERTIFICATE

STATE OF IDAHO

)

)

ss.

County of Ada

)

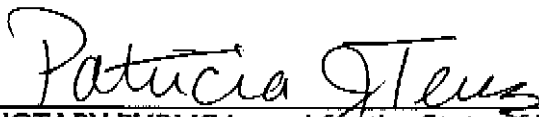
I, Patricia J. Terry, a Notary Public in and for the State of Idaho,  
do hereby certify:

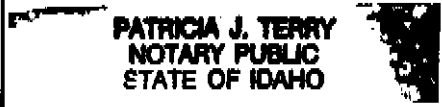
That prior to being examined, the witness named in the fore-  
going deposition was by me duly sworn to testify the truth, the whole truth,  
and nothing but the truth;

That said deposition was taken down by me in shorthand at  
the time and place therein named and thereafter reduced to typewriting  
under my direction, and that the foregoing transcript contains a full, true,  
and verbatim record of the said deposition.

I further certify that I have no interest in the event of the  
action.

WITNESS my hand and seal this            day of            ,  
2001.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Idaho;  
residing at Eagle, Idaho.

  
PATRICIA J. TERRY  
NOTARY PUBLIC  
STATE OF IDAHO

My commission expires 8-9-2007.  
CSR No. 653



**Copy**

In the United States District Court  
for the District of Idaho

KIMBERLEY SMITH and MICHAEL B. HINCKLEY, )	Case No.
individually and on behalf of those similarly )	CIV 01-0244-S-BLW
situated, )	
Plaintiffs, )	
vs. )	
MICRON ELECTRONICS, INC., a Minnesota )	
corporation, )	
Defendant. )	

**DEPOSITION OF JEFFREY R. PARRISH**

January 9, 2002

Reported by  
Patricia J. Terry, RPR  
CSR. No. 653

THE REALTIME COURT REPORTERS  
**TUCKER**  
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>

E-Mail: [tucker@tuckercourtreporters.com](mailto:tucker@tuckercourtreporters.com)

## **DEPOSITION OF JEFFREY R. PARRISH,**

taken at the instance of the defendant, at the law offices of Stoel Rives, LLP,  
101 S. Capitol Boulevard, Suite 1900, in the City of Boise, State of Idaho,  
commencing at 2:02 p.m., on January 9, 2002, before Patricia J. Terry,  
Certified Shorthand Reporter, Registered Professional Reporter by testing, a  
Notary Public in and for the State of Idaho, pursuant to notice, and in  
accordance with the Federal Rules of Civil Procedure.

## **APPEARANCES**

### **For Plaintiffs**

HUNTLEY PARK THOMAS BURKETT  
OLSEN & WILLIAMS, LLP  
by CHRISTOPHER F. HUNTLEY  
250 S. 5th Street, Suite 660  
Post Office Box 2188  
Boise, Idaho 83701  
Phone: (208) 345-7800  
Fax: (208) 345-7894  
E-mail: chuntley@idahoatty.com

### **For Defendant**

STOEL RIVES, LLP  
by KIM J. DOCKSTADER  
and GREGORY C. TOLLEFSON (not appearing)  
101 S. Capitol Boulevard, Suite 1900  
Boise, Idaho 83702  
Phone: (208) 389-9000  
Fax: (208) 389-9040  
E-mail: kjdockstader@stoel.com  
E-mail: gctollefson@stoel.com

Page 53

[1] Excel spreadsheet. I don't know that it was  
[2] adhered to.  
[3] Q: But do you know when that implementation  
[4] occurred?  
[5] A: Not specifically.  
[6] Q: When you say an Excel spreadsheet, what  
[7] do you mean?  
[8] A: Microsoft Excel. A document created in  
[9] Microsoft Excel.  
[10] Q: Was this a document that you had in hard  
[11] copy that was made available showing the shifts  
[12] that were assigned?  
[13] A: No. I would have to keep asking people  
[14] for it because I'd end up deleting it and not have  
[15] access to it and would be asked to be responsible  
[16] to that at certain times and would not have a copy  
[17] of it, so ...  
[18] Q: Who would you get it from when you  
[19] needed it?  
[20] A: An admin.  
[21] Q: Your supervisor?  
[22] A: Possibly.  
[23] Q: Who was your supervisor the entire —  
[24] well, when you started it was Jaime Nava. But did  
[25] you change supervisors?

Page 54

[1] A: Yes, to Tawni Weaver became my  
[2] supervisor when Jaime Nava was promoted to  
[3] corporate sales.  
[4] Q: When did Tawni become your supervisor?  
[5] A: I do not recall the exact date.  
[6] Q: Was it in 2000 or 2001?  
[7] A: 2001.  
[8] Q: Was it in the early part of 2001 or  
[9] towards the latter part of the time you were at the  
[10] company?  
[11] A: Possibly a month to two prior to me  
[12] leaving.  
[13] Q: Not very long before you left, then?  
[14] A: No, not very long at all.  
[15] Q: Are there any other areas of the  
[16] time-keeping policy, Exhibit No. \*012, that you  
[17] failed to comply with?  
[18] A: Not to my recollection.  
[19] Q: As you recall, part of that policy  
[20] requires that employees are responsible for  
[21] reviewing their time sheets to verify the accuracy;  
[22] isn't that right?  
[23] A: Correct.  
[24] Q: When you chose not to comply by not  
[25] putting your time down for meals or recording the

Page 55

[1] time worked, was that your choice to do so?  
[2] A: Yes, it was.  
[3] Q: And that was your responsibility for  
[4] failing to put down the accurate time?  
[5] A: It was stated to me in so many words  
[6] that I needed to build my business. In order to  
[7] build my business, I needed to be able to cater to  
[8] multiple time zones. In order to cater to multiple  
[9] time zones, I needed to work outside the parameters  
[10] that were given to me in my eight-hour shift.  
[11] Q: Whose responsibility was it for failing  
[12] to accurately keep your time?  
[13] A: Mine.  
[14] Q: Did you tell anyone that you were not  
[15] complying with the time-keeping policy?  
[16] A: It was discussed.  
[17] Q: Who did you tell?  
[18] A: It was discussed with Jaime Nava.  
[19] Q: Anyone else?  
[20] A: Fellow employees on my team.  
[21] Q: Who?  
[22] A: Nobody in particular. In conversation.  
[23] In casual conversation with colleagues.  
[24] Q: Anyone else?  
[25] A: Not to my recollection.

Page 56

[1] Q: When you say it was discussed with  
[2] Jaime Nava, what are you referring to?  
[3] A: The state of my business with my  
[4] customers, attention needed to be paid to my  
[5] customers, and the effort I needed to put forth in  
[6] order to build my business.  
[7] Q: My question originally was, did you tell  
[8] anyone that you were not complying with the  
[9] time-keeping policy. Did you tell Jaime Nava that?  
[10] A: I had discussed with Jaime Nava that I  
[11] was not supposed to be getting overtime on my time  
[12] card, but I was to build my business and put in the  
[13] time necessary to do so; hence the discussion  
[14] concerning my time card and the time that was put  
[15] on my time card.  
[16] Q: Did you tell Jaime Nava you weren't  
[17] putting down all of your time?  
[18] A: Yes, I did.  
[19] Q: When did you tell him that?  
[20] A: Multiple times.  
[21] Q: When's the first time?  
[22] A: When I initially started working there,  
[23] overtime was not a problem, getting overtime.  
[24] There was a directive handed down from higher up  
[25] than Jaime. He had informed me that — and I don't

Page 57

(1) remember the exact setting — but I was told that  
(2) we were not to get any more overtime. His budget  
(3) would not allow any more overtime. And also  
(4) discussions concerning the state of our business  
(5) and effort and time needed to put into building our  
(6) business and maintaining our business.

(7) Q: Was this a conversation in which anyone  
(8) else was present?

(9) A: I do not recall.

(10) Q: It was just you and Mr. Nava?

(11) A: There would have been multiple  
(12) conversations concerning this.

(13) Q: I'm talking about the first one.

(14) A: To the best of my recollection, the  
(15) discussion concerning no more overtime being  
(16) allowed would have been in the presence of other  
(17) people on my team. In regards to discussion  
(18) concerning building business, effort required, so  
(19) on and so forth, was probably done around his desk.  
(20) I sat very close to him. There were a few other  
(21) people that sat close, which possibly would have  
(22) allowed them to be witness to those conversations.  
(23) And I recall other conversations with other people  
(24) on our team or group, conversations concerning  
(25) that.

Page 58

(1) Q: I understand. What I'm trying to  
(2) understand is when the conversation and where the  
(3) conversation took place between you and Mr. Nava  
(4) regarding your telling him that you weren't  
(5) recording all of your time.

(6) Did you say it in those specific words?

(7) A: No, I do not think it was said in those  
(8) specific terms.

(9) Q: What did you say?

(10) A: After being told that we were not  
(11) allowed to get any more overtime, the discussion  
(12) was, on my end, to Jaime Nava there are times that  
(13) I need to work over — outside the parameters of  
(14) the eight hours in order to get business done. And  
(15) his reply, not in so many words — I cannot  
(16) remember exactly what he said — was, "Do what you  
(17) have to do to build your business."

(18) Q: Did he tell you to work overtime and not  
(19) record it?

(20) A: In those terms, no.

(21) Q: In any terms?

(22) A: In any terms, yes.

(23) Q: How so?

(24) A: I was responsible for metrics on my team  
(25) concerning call time, concerning number of dials,

Page 59

(1) concerning a monthly goal of revenue, a monthly  
(2) goal of margin. In discussing those goals and  
(3) those metrics, I was told to do what I needed to do  
(4) to meet those.

(5) Q: Had you requested overtime in order to  
(6) be able to do those things? Is that what you're  
(7) telling me?

(8) A: At the time I did not request overtime.  
(9) I was willing to put in that time because  
(10) commission was more important to me than my hourly  
(11) base salary. And in my mind the ends justified the  
(12) means.

(13) Q: Prior to the time you had this first  
(14) conversation with Mr. Nava, did you have any  
(15) problem working and recording overtime?

(16) A: No. Prior to the directive being handed  
(17) down, I had no problem working overtime, letting  
(18) Jaime know that I was working overtime. I was in  
(19) before anybody else on our team, usually, and I  
(20) would schedule my time accordingly.

(21) Q: And you would record that time?

(22) A: Yes, I would.

(23) Q: And you got paid for all of that time?

(24) A: Yes, I did.

(25) Q: When you say the directive coming down,

Page 60

(1) what are you talking about?

(2) A: When I say "directive," there was a  
(3) policy that I would assume was handed down by  
(4) Jaime's superiors. And Jaime had told the team  
(5) that we did not have any more overtime in the  
(6) budget, available in the budget.

(7) Q: So by "directive" you're referring to  
(8) Jaime Nava saying that there was no more room for  
(9) overtime in the budget?

(10) A: Correct.

(11) Q: Is that the only conversation with any  
(12) supervisor that you ever had about overtime in the  
(13) budget?

(14) A: I recall casual conversations with  
(15) Dominic Casey concerning overtime.

(16) Q: Tell me about those conversations.

(17) A: Very casual. In passing. I have a good  
(18) relationship with Dominic Casey; therefore, we  
(19) would converse. And there were times when that  
(20) would be discussed.

(21) Q: What would be discussed?

(22) A: During that time period, there were — I  
(23) was not happy about not being able to get overtime  
(24) because it was nice. It was nice because I was  
(25) willing to work those hours anyways, and it was

## **REPORTER'S CERTIFICATE**

STATE OF IDAHO

)

)

ss.

County of Ada

)

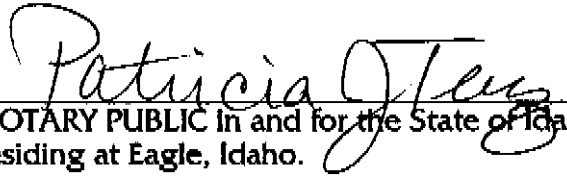
I, Patricia J. Terry, a Notary Public in and for the State of Idaho,  
do hereby certify:


That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of the said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this            day of            ,  
2001.

  
NOTARY PUBLIC in and for the State of Idaho;  
residing at Eagle, Idaho.

 **PATRICIA J. TERRY**  
**NOTARY PUBLIC**  
**STATE OF IDAHO** 

My commission expires 8-9-2007.  
CSR No. 653



**Copy**

In the United States District Court  
for the District of Idaho

---

KIMBERLEY SMITH and MICHAEL B. HINKLEY,	) Case No.
Individually and on behalf of those similarly	) CIV 01-0244-S-BLW
situated,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
MICRON ELECTRONICS, INC., a	)
Minnesota corporation,	)
	)
Defendant.	)
	)
	)

---

**DEPOSITION OF LAURIE A. MCGEORGE**

January 10, 2002

Reported by  
Dianne E. Cromwell  
CSR No. 21

THE REALTIME COURT REPORTERS  
**TUCKER**  
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>

E-Mail: [tucker@tuckercourtreporters.com](mailto:tucker@tuckercourtreporters.com)

**DEPOSITION OF LAURIE A. MCGEORGE**, taken at the instance of the defendants, at the Law Offices of Stoel Rives, LLP, 101 South Capitol Boulevard, in the City of Boise, State of Idaho, commencing at 9:24 a.m., January 10, 2002, before Dianne E. Cromwell, Certified Shorthand Reporter, Registered Professional Reporter by testing, a Notary Public in and for the State of Idaho, pursuant to notice, and in accordance with the federal rules of procedure.

---

## **APPEARANCES**

**For Plaintiffs**

HUNTLEY PARK THOMAS BURKETT OLSEN & WILLIAMS  
by WILLIAM H. THOMAS  
250 S 5th, Ste 660, PO Box 2188  
Boise, ID 83701  
(208) 345-7800      Fax: (208) 345-7894  
EMail: wmthomas@idahoatty.com

**For Defendant**

STOEL RIVES LLP  
by GREGORY C. TOLLEFSON  
101 S. Capitol Blvd, Ste 1900  
Boise, ID 83702-5958  
(208) 389-9000      Fax: (208) 389-9040  
EMail: gctollefson@stoel.com

Page 21

[1] more than 40 hours, I believe management was aware  
[2] that they could get in trouble if we did work more  
[3] than 40 and were not inputting it because they did  
[4] not want us to input more than 40. And to — I  
[5] can't remember the second part of the statement.

[6] Q: I'm getting confused too. You were  
[7] talking about being told not to work more than 40  
[8] hours and being told not to input more than 40  
[9] hours?

[10] A: Right.

[11] Q: Do you remember those specific words  
[12] being used, not to work more or not to input more?

[13] A: My memory is not of specific statements,  
[14] but that was the general theme of what they were  
[15] saying.

[16] Q: Do you remember Mr. Robinson talking on  
[17] some occasions about needing to get prior approval  
[18] to work overtime?

[19] A: Yes, I can recall that from  
[20] Tony Robinson.

[21] Q: Did he ever say, "You're not to work  
[22] more than 40 hours a week unless you get prior  
[23] approval," or words to that effect?

[24] A: I believe he did.

[25] Q: Did he ever say, "You're not to work

Page 22

[1] more than 45 hours a week unless you get prior  
[2] approval," or words to that effect?

[3] A: I don't recall that, regarding the  
[4] 45-hour statement.

[5] Q: Now, do you recall him telling you not  
[6] to input more than 40 hours a week?

[7] A: Words to that effect, yes.

[8] Q: Did Mr. Robinson ever tell you not to  
[9] input more than 40 hours a week unless you had  
[10] prior approval, or words to that effect?

[11] A: Could you repeat the question?

[12] Q: Sure. Did Mr. Robinson ever tell you  
[13] not to input more than 40 hours a week unless you  
[14] had prior approval, or words to that general  
[15] effect?

[16] A: I believe so. It could have been again  
[17] from him or any one of my immediate supervisors.

[18] Q: Now, you said, I believe correctly,  
[19] before that you were fairly certain that he told  
[20] you not to, on some occasions, input more than 45  
[21] hours a week. Is that correct?

[22] A: Yes.

[23] Q: What was your understanding of what he  
[24] meant by that?

[25] A: My understanding was that if we worked

Page 23

[1] more than 45 hours, we were not allowed to input it  
[2] into the time-sheet system, because it would not be  
[3] approved.

[4] Q: Did he say that?

[5] MR. THOMAS: Object to the form of the  
[6] question.

[7] THE WITNESS: I can't say if those were his  
[8] exact words.

[9] Q: BY MR. TOLLEFSON: Did he ever use any  
[10] words to the effect of, "If you work more than 45  
[11] hours, you are not allowed to input it because I  
[12] won't approve it"?

[13] A: I can't say if he used words to that  
[14] effect or if that was the implied meaning.

[15] Q: What causes you to believe that he  
[16] didn't mean, "Don't input more than 45 hours a week  
[17] unless you get prior approval"?

[18] MR. THOMAS: Object to the form of the  
[19] question.

[20] THE WITNESS: Can you repeat the question?

[21] Q: BY MR. TOLLEFSON: Sure. When  
[22] Mr. Robinson told you not to input more than 45  
[23] hours a week, what causes you to believe that he  
[24] didn't mean, "Don't input that time, anything over  
[25] 45, unless you get prior approval"?

Page 24

[1] MR. THOMAS: Object to the form of the  
[2] question.

[3] Answer if you can.

[4] THE WITNESS: I'm having a hard time with  
[5] that question. Could you break it down into two  
[6] questions, maybe?

[7] Q: BY MR. TOLLEFSON: Yes. You told me  
[8] that you're fairly certain that Mr. Robinson on  
[9] some occasions told you not to input more than 45  
[10] hours a week. Is that correct?

[11] A: Yes.

[12] Q: What causes you to believe that when he  
[13] told you that, he didn't mean that you were not to  
[14] input that time, anything over 45, unless you got  
[15] prior approval?

[16] MR. THOMAS: Object to the form of the  
[17] question.

[18] THE WITNESS: Because the words he was using  
[19] basically were that higher management than himself  
[20] would not allow more than 45 hours a week. So it  
[21] wasn't an issue of getting approval to work more  
[22] than 45; it's just that you weren't supposed to  
[23] input it.

[24] Q: BY MR. TOLLEFSON: Is it correct, did  
[25] you tell me that you weren't certain of what exact

## **REPORTER'S CERTIFICATE**

STATE OF IDAHO

)

ss.

County of Ada

)

I, Dianne E. Cromwell, a Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of the said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 21st day of January, 2002.



NOTARY PUBLIC in and for the State of Idaho;  
residing at Boise, Idaho.

My commission expires 5-5-05.  
CSR No. 21





IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH and MICHAEL B.  
HINKLEY, individually and on behalf of  
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendants.

No. CIV01-0244  
S-BLW

**CERTIFIED**  
**COPY**

DEPOSITION OF JEFFERY PAUL CLEVINGER

San Diego, California

Thursday, January 17, 2002

Reported by:  
ANELA SHERADIN  
CSR No. 9128  
JOB No. 23387

501 W. Broadway • Suite 1300 • San Diego, CA 92101

619.233.0633 • Fax 619.544.9901 • 800.829.6159

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH and MICHAEL B.  
HINKLEY, individually and on behalf of  
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendants.

No. CIV01-0244  
S-BLW

DEPOSITION OF JEFFERY PAUL CLEVINGER  
San Diego, California  
Thursday, January 17, 2002

Reported by:  
ANELA SHERADIN  
CSR No. 9128  
JOB No. 23387

1

APPEARANCES:

For Plaintiffs:

HUNTLEY, PARK, THOMAS, BURKETT, OLSEN &  
WILLIAMS, LLP  
BY: WILLIAM H. THOMAS  
Attorney at Law  
250 S. Fifth, Suite 660  
Boise, Idaho 83701  
(208) 345-7800

For Defendants:

STOEL RIVES LLP  
BY: GREGORY C. TOLLEFSON  
Attorney at Law  
101 South Capitol Boulevard, Suite 1900  
Boise, Idaho 83702-5958  
(208) 389-9000

3

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH and MICHAEL B.  
HINKLEY, individually and on behalf of  
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a  
Minnesota corporation,

Defendants.

No. CIV 01-0244  
S-BLW

Deposition of JEFFERY PAUL CLEVINGER, taken  
on behalf of Defendants, at 530 "B" Street,  
Suite 2200, San Diego, California, beginning at  
12:20 p.m. and ending at 5:02 p.m. on Thursday,  
January 17, 2002, before ANELA SHERADIN,  
Certified Shorthand Reporter No. 9128.

2

INDEX

WITNESS	EXAMINATION
JEFFERY PAUL CLEVINGER	
BY MR. TOLLEFSON	6
BY MR. THOMAS	181

EXHIBITS

DEFENDANT	PAGE
63 Notice of Deposition Duces Tecum of Jeff Clevenger; 5 pages	11
64 Micron Application for Employment; 2 pages	22
65 Resume of Jeff Clevenger; 2 pages	26
66 October 29, 1998 Offer of Employment Letter; 3 pages	32
67 Acknowledgment; 1 page	35
68 March 16, 1999 E-mail; 1 page	40
6 January 2000 Payroll Department Procedures; 4 pages	50
26 Timekeeping - Non-Exempt Policy 3.15; 1 page	57
27 Timekeeping - Non-Exempt Policy 3.15; 1 page	67
24 Team Member Handbook; 3 pages	72
17 Overtime Pay - Non-Exempt Policy 3.20; 2 pages	77
69 PCR; 1 page	117

4

1 the very first sentence where it says non-exempt hourly  
2 employees, do you see that?

3 A Under A?

4 Q No, I'm sorry. The very first sentence.

5 A "To ensure accurate recording of time worked."

6 Q "For all non-exempt (hourly) employees."

7 A Right.

8 Q So on -- I'm sorry. Back on paragraph B,  
9 talking about reviewing the timesheets to verify it's  
10 accurate for all times recorded. Do you see that?

11 A I see that.

12 Q And paragraph C talks about if there's an error  
13 in the amount of pay, that you should bring it to the  
14 attention of your supervisor. Do you see that?

15 A I see that.

16 Q Did you ever have an error in the amount of  
17 your pay that you brought to the attention of your  
18 supervisor?

19 A Not specifically to my supervisor.

20 Q And when it says pay, let's split up -- how  
21 about with regards to commissions. Do you recall if  
22 there was an error in the amount of commissions? Did  
23 you ever --

24 A I recall really not knowing how my commissions  
25 worked.

61

1 Q And did you -- so, if I understood you, you  
2 felt that there might have been an error because --  
3 the amount of your pay because why?

4 A Why do I think?

5 I don't think that we were being paid our  
6 overtime.

7 Q When you say "we," are you talking about the  
8 other people on your team?

9 A Yes.

10 Q And that was the consumer small business team?

11 A Yes, that and my small business team. Are you  
12 trying to separate the two right now?

13 Q I'm sorry. That's okay. Did you have a  
14 specific team number, do you remember, when you started  
15 with Mr. Church as your supervisor?

16 A I don't remember my team number. I just  
17 remember working a lot -- a lot but just not ever being  
18 compensated for it all.

19 Q When you say not being compensated for it all,  
20 were you recording all of the overtime that you were  
21 working? We're talking about Mr. Church now.

22 A I was recording what I was -- what the -- how  
23 do I say this? I was recording what was expected of me  
24 to record.

25 Q I'm confused, because you've told me earlier

63

1 Q What about an error in the amount of pay you  
2 received for your hourly work, do you ever recall an  
3 error happening?

4 A Yes.

5 Q And do you recall when that was, approximately?

6 A No, I couldn't give you the exact date, no.

7 Q Do you recall who your supervisor was at that  
8 time?

9 A Well, I only had two supervisors.

10 Q Okay.

11 A And it happened with both of them.

12 Q Okay. Tell me about what happened with the  
13 first supervisor.

14 A Nothing really happened. It was -- it's hard  
15 to explain to you. It was the mentality of the group I  
16 was with. It was like we were working as much as we  
17 were supposed to, but it was -- it was, you know, the  
18 policy to -- well, I can't say policy. It was the  
19 feeling there that you -- we needed to work until  
20 everything was completed; the job was done, the sales  
21 were made. So, in that aspect, time was off a little  
22 bit.

23 Q And was your first supervisor -- are we talking  
24 about Jay Church?

25 A Jay Church was my first supervisor.

62

1 that you thought you reviewed your timesheets before you  
2 submitted them to make sure they were accurate; is  
3 that --

4 A Correct.

5 Q But now are you telling me something different?

6 A Nope.

7 Q Okay. Tell me what I'm missing.

8 A I'm saying that there was an unwritten law -- I  
9 don't know how you term the thing -- that you were to  
10 finish a full day's work as much as possible, even if  
11 that meant staying late and doing whatever it took to  
12 get the job done. Now, I worked all those hours and I  
13 wasn't ever compensated for all of them.

14 Q When you say you worked all those hours, did  
15 you write down or record the hours that you worked?

16 A I did.

17 Q And you submitted those hours to someone, your  
18 supervisor or someone in the company?

19 A The ones I wrote down?

20 Q Yeah.

21 A On my notebook?

22 Q The ones -- the hours that you submitted to the  
23 company to get paid.

24 A I just submitted them through whatever the  
25 system was that I was using, yes.

64

1 Q Right. When you submitted --  
 2 A But we weren't -- we weren't supposed to submit  
 3 all of them. We couldn't go over a certain amount of  
 4 time.  
 5 Q And are you talking about when you -- Mr.  
 6 Church was your supervisor or are you talking about the  
 7 whole term --  
 8 A Just in general. The whole time. It would  
 9 fluctuate, I remember. Sometimes they would be  
 10 approving overtime and then sometimes they wouldn't be  
 11 approving overtime, but everyone was working overtime  
 12 regardless of the fact.  
 13 Q When you say "everyone," are you talking about  
 14 your team?  
 15 A I'm talking about the people -- yeah, most of  
 16 my time -- the ones that were there that were  
 17 competitive that were -- that were there to make money  
 18 and keep their job.  
 19 Q When you're talking about the policies would  
 20 change, sometimes it was okay and sometimes it wasn't,  
 21 are you talking again about your team?  
 22 A I remember them -- yeah. I don't know if it  
 23 was just my team. It could have been everybody. I  
 24 remember them saying that certain -- a certain amount of  
 25 time would be tolerated and up to this amount -- I think

65

1 paid.  
 2 A Oh, I never -- maybe I misunderstood your  
 3 question. No, it did not correspond.  
 4 (Defendant's Exhibit 27 was previously  
 5 marked for identification by the court  
 6 reporter.)  
 7 BY MR. TOLLEFSON:  
 8 Q Let me hand you what's been previously marked  
 9 in this case as Exhibit 27.  
 10 A Okay.  
 11 Q Have you had a chance to review Exhibit 27?  
 12 A Yes, I've reviewed it.  
 13 Q Do you have an understanding of what that  
 14 document is?  
 15 A Yes.  
 16 Q What's your understanding?  
 17 A It appears to me to be their recording of time  
 18 for non-exempt hourly employees and the policies  
 19 therein.  
 20 Q And do you see that the purpose is to ensure  
 21 accurate recording of time for all non-exempt hourly  
 22 employees?  
 23 A Yes.  
 24 Q So did this policy apply to you?  
 25 A It applied to anyone that was hourly.

67

1 it was 45 hours, and then we couldn't go over that. And  
 2 sometimes they would say, you know, no overtime this  
 3 week. They would say that, but then we would still all  
 4 be there for 10, 12 hours and they would be there, but  
 5 no one was reprimanded.  
 6 MR. TOLLEFSON: I'm sorry. would you read back  
 7 that last answer?  
 8 (Record read.)  
 9 BY MR. TOLLEFSON:  
 10 Q When you say, "no one was reprimanded," who are  
 11 you referring to?  
 12 A My team members, the people that were salesmen  
 13 and women.  
 14 Q And reprimanded, they weren't reprimanded for  
 15 what?  
 16 A Being at work still.  
 17 Q And I thought you told me earlier that the time  
 18 you entered in your personal notebook was roughly the  
 19 same as the time that you entered on the computer in  
 20 order to get paid.  
 21 A I -- let me clarify. What I wrote down, I put  
 22 down when I sat down at my desk; and then when I would  
 23 walk to my car, I would write down right when I got out.  
 24 Q And I asked you if that corresponded to the  
 25 time that you entered on some system in order to get

66

1 Q Do you see the last sentence at paragraph A  
 2 where it says, "Time is recorded by accessing me at  
 3 micronpc.com via the InfoNet and confirming or modifying  
 4 total daily hours worked on the timesheet"?  
 5 A I see that.  
 6 Q And do you remember doing that?  
 7 A I remember entering hours.  
 8 Q And you told me a few minutes ago that on some  
 9 occasions the hours that you entered did not match up to  
 10 the total hours that you worked; is that correct?  
 11 A Correct..  
 12 Q Do you see in paragraph A where it says, "No  
 13 work should be performed off the clock"?  
 14 A I see it written there, yes.  
 15 Q Do you have an understanding of what off the  
 16 clock means?  
 17 A I'm assuming not clocked in.  
 18 Q And the second -- I'm sorry. The next sentence  
 19 after that says, "All time worked must be recorded."  
 20 A I see that sentence.  
 21 Q The next sentence, "Failure to record all time  
 22 worked will subject the employee to disciplinary action  
 23 up to and including termination."  
 24 A Yes.  
 25 Q And are you telling me that you did not comply

68

1  
2  
3  
4 I, the undersigned, a Certified Shorthand  
5 Reporter of the State of California, do hereby certify:

6 That the foregoing proceedings were taken  
7 before me at the time and place herein set forth; that  
8 any witnesses in the foregoing proceedings, prior to  
9 testifying, were placed under oath; that a verbatim  
10 record of the proceedings was made by me using machine  
11 shorthand which was thereafter transcribed under my  
12 direction; further, that the foregoing is an accurate  
13 transcription thereof.

14 I further certify that I am neither  
15 financially interested in the action nor a relative or  
16 employee of any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date  
18 subscribed my name.

19  
20 Dated: JAN 28 2002

21  
22  
23 Anela Sheradin  
24 ANELA SHERADIN  
25 CSR No. 9128



**Copy**

In the United States District Court  
for the District of Idaho

KIMBERLEY SMITH and MICHAEL B. HINCKLEY, )  
individually and on behalf of those similarly )  
situated, )

Plaintiffs, )

vs. )

MICRON ELECTRONICS, INC., a Minnesota )  
corporation, )

Defendant. )

Case No.  
CIV 01-0244-S-BLW



**DEPOSITION OF RYAN L. KEEN**

January 25, 2002

Reported by  
Kimberly R. Saunders, RPR  
CSR No. 703

THE REALTIME COURT REPORTERS  
**TUCKER**  
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>

E-Mail: [tucker@tuckercourtreporters.com](mailto:tucker@tuckercourtreporters.com)

## **DEPOSITION OF RYAN L. KEEN,**

taken at the instance of the defendant, at the law offices of Stoel Rives, LLP, 101 S. Capitol Boulevard, Suite 1900, in the City of Boise, State of Idaho, commencing at 9:10 a.m., on January 25, 2002, before Kimberly R. Saunders, Certified Shorthand Reporter, Registered Professional Reporter by testing, a Notary Public in and for the State of Idaho, pursuant to notice, and in accordance with the Federal Rules of Civil Procedure.

## **APPEARANCES**

### **For Plaintiffs**

HUNTLEY PARK THOMAS BURKETT  
OLSEN & WILLIAMS, LLP  
by CHRISTOPHER F. HUNTLEY  
250 S. 5th Street, Suite 660  
Post Office Box 2188  
Boise, Idaho 83701  
Phone: (208) 345-7800  
Fax: (208) 345-7894  
E-mail: chuntley@idahoatty.com

### **For Defendant**

STOEL RIVES, LLP  
by KIM J. DOCKSTADER  
101 S. Capitol Boulevard, Suite 1900  
Boise, Idaho 83702  
Phone: (208) 389-9000  
Fax: (208) 389-9040  
E-mail: kjdockstader@stoel.com  
E-mail: gctollefson@stoel.com

Page 69

(1) yes.  
(2) Q: And those commissions were paid to you  
(3) on a monthly basis. Is that right?  
(4) A: Yes.  
(5) Q: When you started in or about October of  
(6) '98, you joined Micron Electronics as their  
(7) employee. Is that right?  
(8) A: I believe that was the name of the  
(9) company.  
(10) Q: And do you know whether your start date  
(11) was any different than October 12, 1998, as  
(12) reflected in the letter?  
(13) A: No.  
(14) Q: You don't know?  
(15) A: I don't know.  
(16) Q: Did you eventually transfer employment  
(17) to a subsidiary called Micron PC, Inc?  
(18) A: I don't know. They did a lot of  
(19) different things with the name.  
(20) Q: Directing your attention back to  
(21) Deposition Exhibit No. \*077, I believe, would you  
(22) take a look at that. Do you have that in front of  
(23) you?  
(24) A: Yes.  
(25) Q: Would you take a look at page number

Page 70

(1) 4110 of Deposition Exhibit \*077.  
(2) A: Okay.  
(3) Q: That's your W-2. Is that right?  
(4) A: Yes.  
(5) Q: And that reflects an employer of Micron  
(6) PC, Inc., at 625 Stratford Road. Is that right?  
(7) A: Yes.  
(8) Q: And is that the company that you worked  
(9) for during that period of time as reflected on the  
(10) W-2?  
(11) A: Yes.  
(12) Q: And if you could, take a look at the  
(13) remainder pages numbered 4111 through 4123, your  
(14) deposit notices. Do you see those?  
(15) A: Yes.  
(16) Q: And the company listed on the deposit  
(17) notice underneath micronpc.com it says Micron PC,  
(18) Inc. Is that right?  
(19) A: Yes.  
(20) Q: Does that refresh your memory in terms  
(21) of the company that you were working for during  
(22) that period of time?  
(23) A: Yes.  
(24) Q: And it says Micron PC, Inc. Is that  
(25) right?

Page 71

(1) A: Yes. I just didn't know when they  
(2) switched over. I mean, I had no control of what  
(3) they did with the name of the company.  
(4) Q: Well, sometime after you started in  
(5) October of '98 with Micron Electronics you  
(6) transferred to Micron PC. Is that right?  
(7) A: That's a fair statement.  
(8) Q: When you started, did you receive a copy  
(9) of the commission plan?  
(10) A: I believe so.  
(11) Q: And that's one of the documents you no  
(12) longer have. Is that right?  
(13) A: That's correct.  
(14) Q: Do you remember anything about that  
(15) commission plan, the first one?  
(16) A: Yes.  
(17) Q: What do you remember?  
(18) A: I remember you needed to sell more than  
(19) \$200,000 in revenue to start getting commission.  
(20) Q: There was a threshold, then?  
(21) A: Right.  
(22) Q: Do you remember anything else about  
(23) that?  
(24) A: There were other thresholds that  
(25) differentiated what percentage commission you

Page 72

(1) received. I don't remember the specifics.  
(2) Q: Did that commission plan stay the same  
(3) during the time of your employment?  
(4) A: No.  
(5) Q: How often did it change?  
(6) A: A lot.  
(7) Q: Give me an idea.  
(8) A: I would venture to guess I had 10 or 12  
(9) different pay plans over the two plus years I was  
(10) there. I don't have an exact number. That's just  
(11) a guess.  
(12) Q: I understand.  
(13) A: I also think the first pay plan may have  
(14) mentioned how we got paid overtime, but I can't  
(15) remember.  
(16) Q: Do you remember what it said in general?  
(17) A: I remember how Jim Watkins explained it.  
(18) I don't remember what the actual documents said  
(19) versus what he explained.  
(20) Q: Well, then, let's see what you remember  
(21) about what Mr. Watkins explained to you. What do  
(22) you remember?  
(23) A: Jim said that we're going to be required  
(24) to work a lot of overtime and weekends because  
(25) we're so busy, but that's good because you'll make

Page 73

(1) a lot of money on overtime. He said because  
(2) overtime is -- they figure your commission on  
(3) overtime, how many hours you work, your \$7 an hour,  
(4) plus what you averaged on commissions per hour to  
(5) get a rate that's, say, \$15 an hour, and you get  
(6) time and a half of that.

(7) Q: Plus some additional for the commission  
(8) that you worked?

(9) A: That's what I'm saying. If you took  
(10) your hourly and what you made in commission,  
(11) divided it up by how many hours you worked, it  
(12) averaged you made \$15 an hour that month, you would  
(13) get time and a half of that for your overtime.

(14) Q: This was when you started out at \$7 per  
(15) hour?

(16) A: Yes.

(17) Q: When do you remember Mr. Watkins telling  
(18) you that?

(19) A: Within the first two weeks, the first  
(20) week or two we were in training, basically computer  
(21) training. Like the last day of training, he came  
(22) in and explained that pay plan to us and kind of  
(23) got to know us a little more because he was going  
(24) to be our supervisor, and he went into detail on  
(25) that.

Page 74

(1) Q: Do you remember who you went through  
(2) training with?

(3) A: Sure.

(4) Q: Who?

(5) A: Forrest Brown, Carl Burnett.

(6) Q: Is that with a "C" or "K", Carl?

(7) A: I think it was with a "C."

(8) Q: Who else?

(9) A: Patty Diaz, Brooks Durfee. There was, I  
(10) believe, one other individual that didn't end up  
(11) staying on. His other company offered him more  
(12) money, so he decided to stay.

(13) Q: You don't remember the name?

(14) A: I don't.

(15) Q: Anyone else that you can remember?

(16) A: Not that I can remember.

(17) Q: So Jim Watkins came in towards the end  
(18) of this two-week training period to explain the  
(19) commission plan to you?

(20) A: Yes.

(21) Q: And also as part of that, do you  
(22) remember him explaining how you would get paid  
(23) overtime?

(24) A: Yes.

(25) Q: And he told you that you would get paid

Page 75

(1) time and a half for your overtime?

(2) A: Of what you averaged per hour for that  
(3) month.

(4) Q: Do you remember him saying you would get  
(5) time and a half if you worked more than 40 hours in  
(6) a week? How do you remember that?

(7) A: He wrote an example up on the white  
(8) board, and I had it written down on that commission  
(9) statement. I wish I still had that.

(10) If you worked 20 hours of overtime in a  
(11) month, and you averaged \$15 an hour, for that 20  
(12) hours you worked you would get time and a half of  
(13) \$15 an hour.

(14) Q: Did you understand the example, or do  
(15) you recall it having to do with the amount of  
(16) commissions that you earned?

(17) A: It did. It did have to do with that  
(18) because that's how you averaged what you made per  
(19) hour.

(20) Q: I see. So it was your understanding  
(21) that if you worked overtime you would get paid  
(22) additional depending on the amount of commissions  
(23) you earned?

(24) A: That's right. If you would have earned  
(25) no commissions and worked 20 hours of overtime, all

Page 76

(1) you would get is time and a half of your \$7 an  
(2) hour.

(3) Q: Got it. So he was telling you that in  
(4) addition to the time and a half that you would get,  
(5) you would also get an additional amount related to  
(6) commissions. Is that right?

(7) A: Right.

(8) Q: Do you remember him telling you anything  
(9) else about the commission plan or about overtime?

(10) A: I do. I remember he said it was going  
(11) to be changing in two weeks.

(12) Q: What was going to be changing?

(13) A: The commission plan.

(14) Q: Do you remember what the changes were  
(15) going to be?

(16) A: No.

(17) Q: Is that in terms of the thresholds and  
(18) that sort of stuff?

(19) A: You know, I don't remember. Or maybe he  
(20) said it was going to change in the next month or  
(21) something. I don't remember.

(22) Q: Do you remember what the changes were  
(23) that happened within that month?

(24) A: Well, it was my understanding that the  
(25) overtime had changed. They weren't going to pay it

Page 77

(1) based on the commissions anymore. It was just time  
(2) and a half of your hourly.  
(3) Q: What was that understanding based on?  
(4) A: I don't remember.  
(5) Q: When did you first develop that  
(6) understanding?  
(7) A: Within my first month, month and a half.  
(8) Q: And what's it based on?  
(9) A: Again, I don't remember. I don't  
(10) remember if I heard it from Jim or —  
(11) Q: What's that?  
(12) A: I don't remember if I heard that from  
(13) Jim, or if it was in the pay plan or if HR told me.  
(14) I don't remember.  
(15) Q: Do you know if, in fact, there was a  
(16) change?  
(17) A: To the best of my knowledge I never  
(18) received any overtime compensation with regard to  
(19) my commission.  
(20) Q: But you did receive time and a half for  
(21) your overtime?  
(22) A: On my hourly.  
(23) Q: Did you ever ask anyone about the  
(24) reported change and not getting overtime based on  
(25) commission?

Page 78

(1) A: Sure.  
(2) Q: Who?  
(3) A: Sure, I talked to a lot of people  
(4) because it was fairly significant. The only one I  
(5) can for sure remember is Chris McCollough.  
(6) Q: What do you remember talking to Chris  
(7) McCollough about?  
(8) A: I just asked him about that.  
(9) Q: Is Chris a coworker?  
(10) A: Yes. And he had been there, I don't  
(11) know, probably a couple of years before I was. And  
(12) he sat back to back to me. So I relied on him a  
(13) lot. I was new.  
(14) Q: And what did Chris tell you?  
(15) A: I don't remember, other than him saying  
(16) he used to get paid extra.  
(17) Q: Did you ever talk with Mr. Watkins about  
(18) your understanding of the change?  
(19) A: Probably.  
(20) Q: Did you?  
(21) A: I don't remember.  
(22) Q: You don't remember having that  
(23) conversation with him?  
(24) A: I probably did, but I don't remember.  
(25) Q: What makes you say that you probably

Page 79

(1) did?  
(2) A: Because it was on my mind. And any time  
(3) I had questions regarding compensation about my job  
(4) I typically asked my supervisor.  
(5) Q: Do you remember if he said anything to  
(6) you about this conversation?  
(7) A: No, I just don't remember.  
(8) Q: Not sure if the conversation occurred?  
(9) A: I'm not sure if it occurred, and if it  
(10) did, I'm don't know what was said.  
(11) Q: If I understand what you're saying, if  
(12) you had concerns about what you were getting paid,  
(13) it was your practice to bring those to somebody's  
(14) attention?  
(15) A: Yes.  
(16) Q: And since this was an area of concern to  
(17) you, you assume that you brought it to somebody's  
(18) attention?  
(19) A: Yes.  
(20) Q: But you don't remember whether, in fact,  
(21) you did or not?  
(22) A: Right.  
(23) Q: Do you remember any of the other  
(24) subjects that you received training on during your  
(25) two-week orientation?

Page 80

(1) A: I think they made us take a sexual  
(2) harassment class. I know a lot of PC specific  
(3) training is all I remember. There could be more.  
(4) Q: Would you have to sign some documents  
(5) when you were at the training?  
(6) A: I don't remember.  
(7) Q: At your prior jobs that we discussed  
(8) that you listed on your employment application that  
(9) you worked on an hourly basis, did you have to keep  
(10) your time?  
(11) A: Yes.  
(12) Q: At which jobs did you have to keep your  
(13) time?  
(14) A: Well, at Sports Entertainment Group I  
(15) was on a fairly set schedule. I didn't really  
(16) write anything down from that. At Hermans, we  
(17) punched a time card. At Gill Iker's I submitted a  
(18) timesheet every two weeks or something.  
(19) Q: In those jobs, then, you actually had to  
(20) keep track of your time and submit it to somebody  
(21) for approval, except for perhaps Mr. Zappy?  
(22) A: Right.  
(23) Q: And you also had to keep your time when  
(24) you went to work for Micron. Is that right?  
(25) A: Yes.

## REPORTER'S CERTIFICATE

STATE OF IDAHO                                 )  
  )       ss.  
County of Ada                                 )

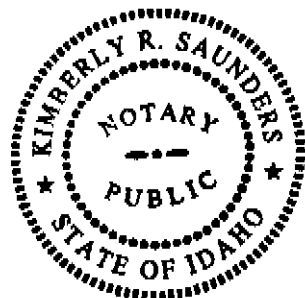
I, Kimberly R. Saunders, a Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of the said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this                day of                ,  
2002.



*Kimberly R. Saunders*  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Idaho;  
residing at Boise, Idaho.

My commission expires 9-24-2005.  
CSR No. 703, RPR



**Copy**

**In the United States District Court  
for the District of Idaho**

---

KIMBERLEY SMITH and MICHAEL B. HINCKLEY, )	Case No.
individually and on behalf of those similarly )	CIV 01-0244-S-BLW
situated, )	
Plaintiffs, )	
vs. )	
MICRON ELECTRONICS, INC., a Minnesota )	
corporation, )	
Defendant. )	

---

**DEPOSITION OF JAMES WELLS**

**January 9, 2002**

Reported by  
Patricia J. Terry, RPR  
CSR No. 653

THE REALTIME COURT REPORTERS  
**TUCKER**  
AND ASSOCIATES, LLC

208-345-3704 • 1-800-424-2354

Fax 208-345-3713

605 WEST FORT STREET

P.O. BOX 1625 • BOISE, ID 83701

Home Page: <http://www.tuckercourtreporters.com>

E-Mail: [tucker@tuckercourtreporters.com](mailto:tucker@tuckercourtreporters.com)

## **DEPOSITION OF JAMES WELLS,**

taken at the instance of the defendant, at the law offices of Stoel Rives, LLP,  
101 S. Capitol Boulevard, Suite 1900, in the City of Boise, State of Idaho,  
commencing at 9:02 a.m., on January 9, 2002, before Patricia J. Terry,  
Certified Shorthand Reporter, Registered Professional Reporter by testing, a  
Notary Public in and for the State of Idaho, pursuant to notice, and in  
accordance with the Federal Rules of Civil Procedure.

## **APPEARANCES**

For Plaintiffs

HUNTLEY PARK THOMAS BURKETT  
OLSEN & WILLIAMS, LLP  
by CHRISTOPHER F. HUNTLEY  
250 S. 5th Street, Suite 660  
Post Office Box 2188  
Boise, Idaho 83701  
Phone: (208) 345-7800  
Fax: (208) 345-7894  
E-mail: chuntley@idahoatty.com

For Defendant

STOEL RIVES, LLP  
by KIM J. DOCKSTADER  
and GREGORY C. TOLLEFSON (not appearing)  
101 S. Capitol Boulevard, Suite 1900  
Boise, Idaho 83702  
Phone: (208) 389-9000  
Fax: (208) 389-9040  
E-mail: kjdockstader@stoel.com  
E-mail: gctollefson@stoel.com

Page 65

[1] A: That's correct.  
[2] Q: And the beginning and ending time of any  
[3] split shift or departure from work for personal  
[4] reasons; isn't that right?  
[5] A: Yes.  
[6] Q: And that it also indicates that time is  
[7] recorded by accessing the time sheet at the VAX  
[8] prompt and entering total daily hours worked; is  
[9] that right?  
[10] A: That's what it says.  
[11] Q: That was the policy that was in effect  
[12] January 28th of '99, isn't that right, as indicated  
[13] at the bottom of that page?  
[14] A: I don't recall. It has the date on the  
[15] bottom.  
[16] Q: The policy also indicates that, prior to  
[17] submission of time sheets for supervisor approval,  
[18] that an employee is responsible for reviewing their  
[19] time sheets to verify the accuracy of all time  
[20] recorded; isn't that right?  
[21] A: That's what it says.  
[22] Q: And that also, in the event there's any  
[23] error, they should promptly bring the discrepancy  
[24] to the attention of their supervisor so that  
[25] corrections can be made as quickly as possible;

Page 66

[1] isn't that right?  
[2] A: That's what it says.  
[3] Q: And then it also provides in paragraph E  
[4] that if you alter, falsify, or tamper with time  
[5] records or record time on somebody else's time  
[6] sheet, it results in disciplinary action including  
[7] termination; is that right?  
[8] A: Yes.  
[9] Q: Is that your understanding of the  
[10] company's policy on timekeeping during this time  
[11] frame from October '97 through 1999?  
[12] A: I don't remember ever reading this  
[13] before.  
[14] Q: Is that inconsistent with your  
[15] understanding of what the policy was?  
[16] A: I don't know.  
[17] Q: Well, during the time period you worked  
[18] there, is it inconsistent with your understanding  
[19] of what the policy was? Did you ever learn it was  
[20] anything different than that?  
[21] A: I didn't know either way. I just knew I  
[22] submitted a time sheet once a week. I never — I  
[23] don't remember ever reading this policy here. It  
[24] sounds like a pretty good policy, but whether it's  
[25] the one that we used or had access to, I don't

Page 67

[1] know.  
[2] Q: Did you, in fact, comply with this  
[3] policy? Did you do what the policy required?  
[4] A: What? This policy?  
[5] Q: Yes.  
[6] A: I couldn't tell you.  
[7] Q: You couldn't tell me whether you  
[8] recorded your time on the VAX? I thought you  
[9] indicated before you did.  
[10] A: That was the tool for recording time. I  
[11] don't know if I did it every time or if my  
[12] supervisor did it or — I don't remember how the  
[13] VAX process worked. I know that it was the  
[14] software they used to keep time, and I remember  
[15] seeing — I can remember seeing the screens, but I  
[16] don't remember what it was all about.  
[17] Q: Do you have any reason to believe that  
[18] you did not accurately record the time you began  
[19] and ended your work?  
[20] A: Ask the question again. I'm sorry.  
[21] Q: Could you repeat the question for the  
[22] witness, please.  
[23] (Record read.)  
[24] THE WITNESS: That's a hard question to  
[25] answer.

Page 68

[1] Q: BY MR. DOCKSTADER: What's hard about  
[2] the question?  
[3] A: Towards the end of my employment at  
[4] Micron, we didn't use the VAX system. We had  
[5] strict guidelines in place of what we had to get  
[6] done in a day, and we also had several periods  
[7] where we were not allowed to have unapproved  
[8] overtime. So kind of a catch 22. You want to keep  
[9] your job. You want to make sure that you have  
[10] everything done in your allotted time period. You  
[11] don't want to submit overtime if it's not approved,  
[12] but sometimes you had to stay a little bit later to  
[13] get what you needed to have done in that day to  
[14] meet your requirements to keep your job.  
[15] So did I not put all my time on time  
[16] sheets? That happened occasionally.  
[17] Q: When?  
[18] A: I don't remember specific dates, but I  
[19] know from time to time that that had to be done  
[20] to — you have to keep your job, and is it worth  
[21] working a little bit of — staying a little bit  
[22] late not marking it on the clock to keep your job  
[23] and get things done.  
[24] Q: With respect to Deposition Exhibit \*026  
[25] and entering your time on the VAX, which is what we

## REPORTER'S CERTIFICATE

STATE OF IDAHO

)

)

SS.

County of Ada

)

I, Patricia J. Terry, a Notary Public in and for the State of Idaho,  
do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true, and verbatim record of the said deposition.

I further certify that I have no interest in the event of the  
action.

WITNESS my hand and seal this                      day of  
2001.

Patricia Jones  
NOTARY PUBLIC in and for the State of Idaho;  
residing at Eagle, Idaho.

**PATRICIA J. TERRY**  
**NOTARY PUBLIC**  
**STATE OF IDAHO**

My commission expires 8-9-2007.  
CSR No. 653